IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9336 of 1993

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA.

Versus

GUJARAT STATE FERTILIZERS COMPANY LIMITED.

Appearance:

1. Special Civil Application No. 9336 of 1993
FRESH NOTICE REQD(N) for Petitioner No. 1-2
MR PARESH M DAVE for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE D.A.MEHTA

Date of decision: 18/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

This is a petition filed by the Union of India for challenging the ex-parte ad-interim injunction order dated 14.6.1993 (Annexure "D") passed by the learned 5th

Joint Civil Judge (SD), Baroda in Special Civil Suit No. 515 of 1993 filed by the respondent Company-Gujarat State Fertilizers Co. Ltd.

2. The respondent-Company (hereinafter referred to as "the respondent") is engaged in the business of manufacturing, inter alia, acrylic sheets. According to the respondent, Methyl Methacrylate is an intermediate product resulting during the manufacturing process of acrylic sheets, but it has a very short self life of only a few hours and, therefore, it is not an excisable commodity. However, the Assistant Collector of Central Excise, Division 1, Vadodara passed order dated 20.5.1993 (Annexure "A") classifying the product prepolymer of Methyl Methacrylate (MMA) under Chapter Heading No.3906.10 and liable for duty at appropriate rates. Instead of challenging the said order before the appellate authority under the provisions of the Central Excise Act, 1944, the respondent filed the above numbered Civil Suit for challenging the said order of the Assistant Collector and also prayed for ad-interim stay of operation and execution of the said order. The learned then 5th Joint Civil Judge (SD), Vadodara entertained the suit and granted ad-interim stay as prayed for. Aggrieved by the said order, the Union of India filed the present petition. While admitting the petition on 30.9.1993, this Court stayed the ex-parte stay granted by the Civil Court, Baroda.

3. At the hearing of the petition, Mr Paresh M Dave, learned counsel for the respondent states that during pendency of the petition, the respondent Company challenged the order dated 20.5.1993 of the Assistant Collector before the Collector of Central Excise (Appeals) and the said appeal came to be allowed. The department challenged the said appellate order before the CEGAT and the CEGAT was pleased to dismiss the said appeal and the matter has rested there.

4. In view of the above developments, it is obvious that the petition has become infructuous as the order dated 20.5.1993 passed by the Assistant Collector has already been set aside by the appellate authority under the Central Excise Act, 1944. In fact, the civil suit filed by the respondent before the Civil Court at Baroda has also become infructuous. Nothing further is, therefore, required to be done in the matter.

5. The petition is accordingly disposed of as infructuous. Rule is discharged with no order as to costs.

A copy of this order shall also be sent to the Court of Civil Judge (SD), Baroda for the purpose of enabling that Court to dispose of Civil Suit No.515 of 1993, if it is still pending.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-